IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 178 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARMADABEN W/O BIJIYABHAI PARSHOTTAMBHAI
Versus
STATE OF GUJARAT

Appearance:
MR PM VYAS for Appellants
MR AJ DESAI, APP for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/04/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This appeal is preferred by the accused of Sessions Case No. 248 of 1996 of the Court of Sessions of Bharuch against the judgment and order dated 20.1.1997 convicting the accused - appellant No.1 Smt. Narmadaben, wife of Bijiyabhai Vasava for the offence proved against her under Section 323 of the IPC and sentencing her to undergo the rigorous imprisonment of six months and to pay fine of Rs.250/- in default to undergo further rigorous imprisonment for 15 days, and convicting both the appellants - accused for the charges proved against them under Section 302 read with Section 114 of IPC and sentencing each of them to undergo rigorous imprisonment for life and to pay fine of Rs. 1,000/- in default to undergo further rigorous imprisonment for six months.

2. As per the prosecution case, original complainant Shri Prabhubhai Laxmanbhai Vasava PW-2 and accused at the relevant time were residing at Vachalu Falia in village Dadheda of Jhagadia Taluka District Bharuch. Accused appellant No.1 is wife and accused appellant No.2 is husband. On 6.8.1996 in the evening at about 7.30 p.m. while PW-2 Prabhubhai Laxmanbhai Vasava was sitting near his house, he heard shouts of victim Shantaben, wife of Ramsingbhai Badharbhai. On account of shouts, PW-2 Prabhubhai rushed to the place and saw that accused appellant No.1 Narmadaben was beating Shantaben with stick. PW-2 Prabhubhai attempted to intervene and tried to separate them and in the meanwhile accused appellant No.2 husband of appellant No.1 Narmadaben came out of his house with a stick and started beating Shantaben. As a result of that, Shantaben fallen down on the ground. While complainant PW-2 Prabhubhai was watching this incident and was about to leave the place, appellant accused No.1 Narmadaben inflicted two blows of stick on the left thigh of PW-2 Prabhubhai. PW-2 Prabhubhai thereupon went to Rameshbhai son of deceased Shantaben, and Rameshbhai at the relevant juncture was at his in-laws house in the village. On informing by PW-2 Prabhubhai, Rameshbhai along with Prabhubhai came to the place of incident. Uncle of Rameshbhai, Ganapatbhai Badharbhai Vasava and Rameshbhai and one Keshurbhai Parshottambhai lifted victim Shantaben from the place of scene of offence i.e. from the front of the house of the accused - appellant No.2 and brought Shantaben to her own house. Shantaben told to these persons that while discussing about the fence of the house with appellant accused No.1 Narmadaben, she was beaten by appellants accused. At that juncture, no serious injuries were apparent on the body of the deceased Shantaben. Husband of Shantaben was not in the house and was engaged in some other work and non-availability of vehicle, complainant

PW-2 Prabhubhai Laxmanbhai and Rameshbhai could not afford her medical assistance and thought that Shantaben would be alright. Thereafter, in the morning at about 9.00 a.m. on 7.8.1996 when PW-2 inquired about Shantaben, he found that Shantaben had died. Husband of Shantaben had still not returned to the house and, therefore, son of the deceased Shantaben and PW-2 Prabhubhai both decided to wait for Ramsingbhai and then to take decision about Shantaben. Search was made for the Sarpanch of the village but he was not found. When Sarpanch returned to the village, PW-2 Prabhubhai informed Sarpanch about the incident. Thereafter, PW-2 Prabhubhai, Rameshbhai and Sarpanch all went to Jhagadia Police Station and complaint came to be lodged by PW-2 Prabhubhai against appellants - accused in Jhagadia Police Station at 17.45 hours on 7.8.1996, which came to be registered as Crime Register No. I-153 of 1996 and PW-13 Police Inspector Sunderbhai Desai investigated the complaint and filed a charge sheet for the offences punishable under Sections 323, 302 and 114 of IPC against both the appellants - accused before the learned Judicial Magistrate, First Class, Jhagadia. The case thereafter was committed to the court of Sessions at Bharuch. It is revealed that the cause of incident was in respect of a fence in front of the house of the accused appellants and deceased Shantaban which was on a way leading to the sim of village and in this respect the altercation took place between the accused and Shantaben.

3. Learned Sessions Judge, Bharuch, framed the charge against both the appellants - accused on 1.11.1996 vide Exh.2 and appellants pleaded not guilty to the charges. Therefore, prosecution examined as many as 13 witnesses and produced documentary evidence on record as well. Thereafter hearing both the parties, the learned Trail Judge after recording of the further statement of the appellants - accused, in which the appellants accused took the defence of total denial, found both the appellants - accused guilty as aforesaid and sentenced them. Hence this Appeal.

4. Learned Advocate Mr. P.M. Vyas appointed for the appellants - accused and learned APP Mr. A.J. Desai for the respondent State were heard at length. Attempt on the part of learned Advocate for the appellants, at the first instance was that the incident was not proved because the witnesses have not supported the Prosecution and secondly if at all the incident is proved, then the accused appellants are guilty of lesser offence and not for the charges under Section 302 IPC. Learned APP Mr. Desai has supported the judgment and order impugned in

this Appeal.

5. It is necessary first to consider the evidence of PW-1 Dr. Jitendrakumar Rathod, Exh.10, who found the following external injuries on the dead body. He performed postmortem on 7th August, 1996 at 7.45 p.m.

1. Abrasion on the left neck, chest above the lateral end of the clavicle, size : 1.5 cms x 0.5 cm.

2. Bruise on this lateral aspect of the upper 1/3rd of the right thigh 2.5 cms below iliac crest: size 3" x 1/2" reddish blue in colour.

3. Bruise on right thigh middle 1/3rd size : 3" x 1.5" reddish blue in colour.

4. Abrasion with scale on the left forehead 1.5 cms x 0.5 cms.

5. Abrasion beneath the right elbow 1 cm x 1 cm with scale.

6. Abrasion on the back of right hand 1 cm x 1 cm scale present.

7. Multiple abrasions on the right umbilicus and left hypochondria region of the abdomen, reddish blue in colour. Size : varying from 1" x 1/2" to 1.5" x 0.5".

Accordingly, PW-1 Dr. Jitendrakumar Rathod found that deceased Shantaben had following internal injuries:

1. Diffused haematoma beneath subcutaneous tissue and over inter-coastal muscle over the left 10th and 11th internal coastal space with fracture of both the ribs.

2. Diffused haematoma beneath subcutaneous tissue and over abdominal muscle with right umbilicus.

3. Large quantity of fluid blood present in peritoneal cavity.

4. There was undigested food in the stomach.

5. Loaded with sub-paritonial haematoma of

the omentum of the ascending column of large intestine with lacerations of the multiple vessels and colour was black.

6. Large lacerated wound covering the whole posterior - anterior aspect of the spleen, size : 4" x 2" x 1/2".

6. In the opinion of PW-1 Dr. Jitendrakumar Rathod, all injuries were antemortem and that injury to spleen i.e. internal injury No.6 above was sufficient in the ordinary course of nature to cause death and the same injury was corresponding to external injury No.7 which was on the spleen. The cause of death, according to PW-1 was shock due to profused haemorrhage in the peritoneal cavity of the abdomen following the traumatic injury to the spleen. Postmortem Note is produced at Exh. 13.

7. In respect of this, it was submitted that all injuries reflected in the postmortem note are not noticed by the panchas of the panchnama of inquest which is at Exh.7, but this contradiction would not affect the prosecution case only because out of all external injuries Nos. 1 to 7 of the postmortem note some are not mentioned in the inquest panchnama. It might happen that the panchas being village persons, might have omitted to describe in detail all the injuries. The death of Shantaben on account of the injuries is, therefore, proved by the prosecution beyond doubt and it is also proved that the death of Shantaben was culpable homicide. Now the question is whether the prosecution was able to prove beyond doubt that the injuries caused to Shantaben were caused by accused - appellants. True it is that, PW-2 complainant Prabhubhai though an eye witness has halfheartedly supported the prosecution case. He supported the prosecution case to the extent that appellant No.1 Narmadaben inflicted two blows of stick on his left thigh and thereafter he stated that due to fear he left the scene of offence. He tried to help the accused by stating also that he did not lodge the complaint at Exh. 37 but when his evidence is appreciated with the evidence of Investigating Officer i.e. PW-13 PSI Sundarbhai Ambalal Desai, it becomes clear that PW-2 Prabhubhai lodged the complaint and also subscribed thumb impression below Exh. 37 First Information Report and, therefore, it should be believed that PW-2 lodged the First Information Report Exh. 37 and supported the prosecution case to the extent that appellant - accused No.1 Narmadaben inflicted two blows of stick on his thigh. Needless it is to say that it is not the rule of law that the evidence of a witness who

has turned hostile, should be discarded in toto. If such witness supports the case of prosecution to some extent and such evidence is reliable, then such evidence can be acted upon. Witness PW-2 Prabhubhai can be relied upon to the extent that he lodged the complaint and received injuries in the incident and subscribed his thumb impression to the complaint at Exh. 37. This fact is supported by PW-12 Champakbhai Ramabhai Exh.33 who has identified the thumb impression of the complainant PW-2. Champakbhai Ramabhai stated that PW-2 Prabhubhai and Rameshbhai came to him on the day of incident and requested him to come to Jhagadia Police Station for lodging complaint. He accompanied with them. PW-2 Prabhubhai lodged the complaint and subscribed his thumb impression which was attested by him. He has been cross-examined in detail but the version of the witness stated in his examination-in-chief could not be shaken by the defense.

8. In addition to PW-2, prosecution relied upon the evidence of PW-3 Ganpatbhai Badarbhai Vasava Exh.18, PW-4 Dadubhai Sukabhai, Exh.19, PW-5 Nortiben Maganbhai, Exh. 20, PW-6 Ravjibhai Sukabhai Vasava, PW-21 as witnesses to the incident. Out of these five eye witnesses, four eye witnesses, except PW-4 Dadubhai Sukabhai, turned hostile to the prosecution and not supported the case of prosecution fully.

9. PW-3 Ganpatbhai Badharbhai Vasava attempted to show his ignorance about the incident and stated that on the day of the incident, he was not present in the village and came to know about the incident only on the next day morning, but in cross-examination by learned APP he admitted that PW-2 Prabhubhai attempted to separate appellant - accused No.1 and Shantaben and further admitted that Rameshbhai and one Keshurbhai Parshottambhai lifted Shantaben from the place of incident to her house. He admitted that Shantaben with difficulties told that on account of fence there was quarrel between her and the appellant - accused. He also admitted that he did state before the Police that he accompanied Sarpanch, Rameshbhai and Prabhubhai to Jhagadia Police Station. Therefore, from his evidence, though he has turned hostile, reliance can be placed to the extent that witness admits the occurrence of the incident at the scene of offence and lodging of the complaint by PW-2. To this extent, reliance can be placed on this witness.

10. PW-4 Dadubhai Sukabhai Exh. 19, is the only witness of the incident who has supported the prosecution

case fully. It is the law of the land that it is not the quantity but the quality of the evidence that matters. When we appreciate the evidence of this witness, it is clear that the prosecution was able to prove the incident beyond reasonable doubt through this witness alone, but the evidence of other witnesses is discussed because though other four eye witnesses turned hostile, but they do support the prosecution case to some extent which corroborates the evidence of eye witness PW-4 Dadubhai Sukabhai at Exh.19. Sukhabhai resides in the same falia in which the incident occurred. He deposed that Shantaben died before two months of recording of his evidence. He deposed in his own way that accused appellant - No.1 pushed Shantaben towards the fence and accused appellant No.2 Bijiyabhai Parshottambhai came out of the house and inflicted stick blows to deceased. He also deposed that appellant - accused No.2 gave push blows of stick on the body of deceased Shantaben. He also deposed that accused - appellant No.1 Narmadaben inflicted two blows of stick to PW-2 Prabhubhai Laxmanbhai. He also deposed that Shantaben fell down on the ground and he watched this from near his house. The incident took place at about 8.00 p.m. The house of the appellants - accused is only five to six feet away from his house. He has been extensively cross-examined by the defence but nothing has come out to doubt the evidence of this eye witness nor anything even is suggested that why this independent witness was deposing against the appellants - accused. The manner in which the witness has deposed before the Court is so natural and simple that his evidence inspires confidence and guarantees reliability. There is no reason to disbelieve this witness though it was submitted that in the map produced at Exh. 31, the house of this PW-4 Dadubhai Sukabhai has not been shown nor his house is shown in the panchnama of scene of offence. This is hardly a reason to discard the whole evidence of this independent witness more particularly his evidence gets corroboration from other witnesses.

11. The remaining eye witnesses are PW-5 Nortiben Maganbhai Exh.20 and PW-6 Ravjibhai Sukabhai Vasava Exh. 22, brother of PW-4 Dadubhai Sukhabhai. Though both the witnesses turned hostile but when they were confronted with the police statement in cross-examination by the prosecution, witnesses have admitted that they were present when the incident took place. PW-5 Nortiben Ganpatbhai admitted in her cross-examination by APP that appellant - accused No.1 inflicted two blows of stick on the body of PW-2 Prabhubhai Laxmanbhai. Therefore, having gone through the evidence of Nortiben carefully,

an inference can be drawn that appellant - accused No.1 was present at the scene of offence and that this witness also confirmed that the deceased was lying on the ground. Inflictions of blows to PW-2 is also corroborated by this witness. While PW-6 Ravjibhai Sukabhai Vasava Exh. 21 has turned hostile, admitted in cross-examination by APP that the incident occurred on 6.8.1996 at about 8.00 p.m. while he was taking supper and heard some shouts outside his house. He admitted to the extent that on hearing the shouts when he came out of his house, PW-2 Prabhubhai Laxmanbhai had rushed to the scene of offence and separated appellant - accused No.1 and deceased Shantaben. It was also admitted by him that both were scuffling. He corroborated the fact that the appellant accused No.1 inflicted two blows of stick to PW-2 Prabhubhai Laxmanbhai.

12. Prosecution examined other witnesses also but they are not important witnesses to come to the conclusion. PW-7 Rameshbhai Ramsinghbhai Vasava, son of the deceased is examined at Exh. 22 and PW-11 Bakorbhai Naniyabhai Vasava is examined at Exh.32 who was Sarpanch at the relevant time. Rameshbhai is not an eye witness and he came thereafter to the scene of offence on informing by Prabhubhai PW-2. Though he omitted to state about oral statement which was made by deceased Shantaben before him, he stated that they lifted his mother and put her in her house. Due to non-availability of vehicle, rainy season and since they thought that Shantaben had minor injuries, she would be recovered soon, he left the house of his mother and came to know on the next day that his mother had died. But the fact remains that whatever had informed to him by PW-2 Prabhubhai Laxmanbhai about the incident has been deposed by him. PW-8 Usmanbhai Moyuddin Exh. 25 is panch of panchnama Exh. 24 by which the Investigating Officer seized the muddamal stick from the accused and he has supported the prosecution case. PW-10 Ishwarbhai Hirabhai Exh. 28 is examined to produce map of scene of offence because he being the Circle-cum-Talati at the relevant time had prepared such map which he produced at Exh.31. While PW-11 Bakorbhai Naniabhai Exh. 32 stated that on the day on which Shantaben died at noon, her son Rameshbhai had come to him and stated that the accused had murdered his mother. This witness is important to the extent that thereafter with Rameshbhai, Prabhubhai Laxmanbhai and with one Champakbhai Ramolbhai Vasava all went to Jhagadia Police Station where PW-2 Prabhubhai lodged a complaint and subscribed his thumb impression to First Information Report - Exh.37. Last witness PW-13 Sundarbhai Ambalal Desai, Investigating Officer is examined at Exh. 36 who

also stated that on 7.8.96 while he was serving as Police Inspector at Jhagadia Police Station, PW-2 Prabhubhai Laxmanbhai lodged his complaint which was recorded according to his say and thereafter in his presence PW-2 Prabhubhai Laxmanbhai subscribed his thumb impression. Witness also stated that one Champakbhai Ramolbhai Exh.33 has identified his thumb mark of the complainant. He investigated the offence and submitted the chargesheet.

13. From the above evidence, on re-appreciation we found that it has been clearly established that though the First Information Report Exh. 37 is filed late, but it is amply proved that the same was filed by PW-2 Prabhubhai Laxmanbhai and prior to that since the husband of Shantaben was not at home, all concerned decided to wait for him. Rameshbhai in his deposition has also stated that when he came to know this incident it was night time and it was rainy, the facility of vehicle was not available at the village, therefore, he could not take his mother for medical treatment. After arrival of the husband of the deceased Shantaben, Sarpanch was contacted and complaint came to be lodged. From the evidence of PW-5 Mourtiben Ganpatbhai and her admission in cross-examination, it is clear that the incident took place as narrated by the prosecution. The prosecution case is more supported by the evidence of Dadubhai Sukabhai, PW-4. From the evidence of Dadubhai Sukabhai, it is clear that both the accused - appellants inflicted stick blows on the deceased. Presence of Dadubhai Sukabhai PW-4 and Mourtiben Ganpatbhai PW-5 at the place of incident appears to be natural. Dadubhai Sukabhai who has supported the prosecution case appears to be dependable witness and his evidence inspires confidence. Not only that but to a greater extent his evidence is corroborated by PW-5 Mourtiben Ganpatbhai when she admitted the incident in her cross examination. Moreover, there is nothing on the record even to remotely suggest that there was any earthly reason for Dadubhai Sukabhai to depose against both the accused. Not only that even PW-2 Prabhubhai Laxmanbhai though has turned hostile, in cross-examination, admitted that the quarrel took place between the accused No.1 Narmdaben and deceased Shantaben and he separated Shantaben and Narmadaben. Even PW-3 Ganpatbhai Bagarbhai Vasava admitted the occurrence of incident at 8.00 p.m. in Vachalu Falia in village Dadheda. As per the prosecution case, to that extent this hostile witness also lends corroboration to the evidence of PW-4 Dudabhai Sukabhai. The say of PW-4 Dudabhai Sukabhai is further supported by the evidence of PW-1 Dr.Jitendra Rathod, who performed postmortem of the dead body of the deceased. Therefore,

on re-appreciation of the evidence we are in complete agreement that Shantaben died due to injuries which she received at the hands of the appellants accused and prosecution is able to prove so far as the incident is concerned, the case against both the appellants, beyond reasonable doubt.

14. Now the question arises as to whether what offence from the facts and circumstances of the case is proved against accused - appellants. Whether accused appellants are guilty for causing murder of Shantaben or whether they are liable for any lesser offence. As per the evidence of PW-1 Jitendra Rathod, there were internal injuries corresponding to external injuries. Clinically there was fracture on left 10th and 11th ribs. The cause of death was due to the shock, due to profused haemorrhage in the peritoneal cavity of the abdomen following the traumatic injury to the spleen. According to PW-1 Dr. Jitendra Rathod, out of 7 injuries caused to the deceased, only injury caused to the spleen of the deceased was fatal and sufficient in ordinary course of nature to cause death. All other injuries were not therefore sufficient in ordinary course of nature to cause death. It is also stated by PW-1 that the injuries were caused by hard and blunt substance. Therefore, it is necessary to ascertain the intention of the appellants accused while they inflicted injuries to the deceased. In other words, the injuries to the deceased were inflicted by the accused - appellants deliberately with intention to kill or cause such bodily injury as was likely to cause death in normal ordinary course. When from the evidence of the prosecution as it is established, it does not flow that there was intention on the part of the accused appellants to put an end the life of the deceased. The accused appellants cannot be held guilty for committing the murder of the deceased if the premeditation and required intention to kill is found absent. It is necessary to scrutinise, therefore, the background of the incident took place, the manner in which the accused - appellants acted, the weapons used by the accused which are guiding factors to arrive at a decision whether the accused - appellants had required intention either to cause death or to cause such bodily injury resulting in death of the deceased. In the backdrop and the circumstance appearing in the case, it clearly surfaces from the circumstances that there was minor dispute about the fence between the deceased Shantaben and appellant accused No.1 Narmadaben who inflicted blows by a stick. The prosecution case as has been established by the evidence, as above discussed, it is clear that thereafter the accused - appellant No.2

came to aid accused appellant No.1 and inflicted blows on Shantaben. It is crucial point to be taken into consideration that the death is due to injuries on the spleen of the deceased because on account of profuse bleeding from the injury caused to the spleen, haemorrhage occurred in peritoneal cavity causing death of the deceased. It is also crucial to note that the external injuries corresponding to injury to the spleen of the deceased was injury No.7 according to PW-1. When we refer to injury No.7, it is only multiple abrasions on the right umbilicus and left hypochondria region of the abdomen, reddish blue in colour. Size: varying from 1" x 1/2" to 1.5" 0.5". It is also crucial to note that the sticks stated to have been recovered from the accused appellants are the sticks of the ordinary size and the sticks which the villagers use and keep with them for agricultural or other purposes. It is also germane to note that death of the deceased was due to internal injury to the spleen. Now having regard to the corresponding injuries to the fatal internal injury, the injury No.7, the size of the same and the weapon used by the accused - appellant i.e. simple stick indicate that the accused - appellant must not have the intention to kill or cause such bodily injury to the deceased to cause death. We cannot attribute having regard to the nature of the external injury and the circumstances in which the incident has occurred even the knowledge to the accused appellants that the injuries which they caused were likely to cause death to the deceased. The intention to cause death or cause such bodily injury as was likely to cause death in normal or ordinary course cannot be readily imputed to the accused. This will have to be inferred after testing of the surrounding circumstances of the prosecution case and after undertaking close judicial scrutiny. The circumstances of this case as has been established by two eye witnesses, it clearly comes out that it never was the intention on the part of any appellant - accused to cause death of the deceased but since there was a dispute in respect of fence and it appears that the deceased was too adamant, the accused appellants evidently wanted to teach a lesson to the deceased for having picking up quarrels for the fence. At the best, the intention of the accused appellants was to the extent of giving sound thrashing to the victim who was intermeddling with the fence opposite the house of the accused appellants and, therefore, though there is internal injury to the spleen, we do not find the corresponding external injury No.7 that serious, which could have caused by the accused - appellants with intention and knowledge to cause death of the deceased. It is also pertinent to note here that it would be unjust

to impute knowledge to the accused - appellants that by thrusting or inflicting the simple stick on the abdomen of the deceased, there was likelihood to cause injuries to spleen resulting into death. It is not the case of the prosecution that the appellants accused were noticed by overt gesture or such utterance with these inflictions of injuries as to indicate that even right from the start of the quarrel, accused appellants had either intention to kill the deceased or they inflicted injuries with the knowledge that such injuries were likely to cause death. True it is that, ordinarily, when one inflicts injury, it must be presumed that he had required intention to cause such injury. But, in this case, as discussed above, the external injury No.7 which is inflicted by the accused appellants fails to raise such presumption that they had intention to cause injuries to the spleen or had required knowledge. In this view of the matter though we agree with the Trial Judge that the incident did occur as has been established by prosecution witnesses, but we are unable to agree that the accused - appellants are guilty of committing murder of deceased Shantaben. From the external injury No.7 though ultimately resulting in the spleen injury, from the weapon used by the appellants accused, from the circumstances of the case and since it is clear that accused - appellants wanted to teach a sound lesson to the deceased, the accused appellants can at the most held guilty for the offence under Section 325 of the Indian Penal Code for causing grievous injury of fracture of ribs to the deceased and injury No.7 which ultimately proved endangering to life because nature of injuries found on the deceased attract the definition falling under the Clause Seventhly and Eighthly of Sec. 320 of IPC. The case of the prosecution as has been established cannot be stretched further than the offence punishable under Section 325 of the IPC and no further.

15. From the evidence of the prosecution especially as deposed by PW-2 Prabhubhai Laxmanbhai, PW-4 Dadubhai Sukabhai and PW-5 Mourtiben Ganpatbhai, the prosecution has proved beyond reasonable doubt the charge against the appellant accused No.1 Narmadaben for the offence punishable under Section 323 for causing simple injuries to PW-2 Prabhubhai Laxmanbhai.

16. Therefore, we do not interfere in the findings of the Trial Judge in respect of convicting and sentencing the appellant - accused No.1 Narmadaben for causing injuries to PW-2 Prabhubhai Laxmanbhai but we interfere and alter the impugned judgment and order of the learned Trial Judge in respect of the death of deceased Shantaben and we alter the conviction of both the appellants from

under Section 302 of the IPC to Section 325 of the Indian Penal Code.

17. Now the question is what should be the sentence awarded to both the appellants for the offence proved against them under Section 325 of the Indian Penal Code. We have heard learned Advocate for the appellants Mr. P.M. Vyas appointed and learned APP Mr. A.J. Desai for the respondent State and we have gone through the jail sheet of both the accused appellants and record and proceedings of trial court. It is revealed that the accused - appellant No.1 Narmadaben has remained in jail custody for 31 days during trail and after conviction she was in jail for 8 months 17 days. She was released on bail by the order of the Division Bench of this Court from 7.10.1997 and, therefore, she has in all undergone imprisonment of 9 months and 18 days and according to jail remarks she is entitled to remission of two years had the conviction under Section 302 of the IPC been confirmed, while appellant - accused No.2 Bijyabhai Parshottambhai Vasava was under-trial prisoner for five months and 13 days and after conviction during appeal he was also in jail for 8 months and 17 days and was entitled to remission of two years as above said. The appellant accused No.2 Bijiyabhai also was released on bail by the order of the Division Bench of this Court from 7.10.1997. Therefore, while maintaining conviction and sentence as awarded by the learned Trial Judge to accused - appellant No.1 Narmadaben for the offence proved against her under Section 323 IPC in respect of the injuries caused to PW-2 Prabhubhai Laxmanbhai, we find it proper to punish each appellants - accused for the imprisonment for the period for which each of the appellants accused has undergone and with fine of Rs.500/- to be paid by them within one month from today, in default to undergo rigorous imprisonment of 15 days for the charges proved against them under Section 325 of the Indian Penal Code for causing injuries to the deceased Shantaben. Accordingly, the following order is passed.

18. In the result, the Appeal of appellant - accused No.1 Narmadaben, wife of Bijiyabhai Parshottambhai, against her conviction and sentence under Section 323 of the IPC for the injury caused to Complainant - Prabhubhai Laxmanbhai Vasava is hereby dismissed, while Appeal of both the appellants accused is partly allowed to the extent that the judgment and order of Trial Court convicting each of the appellant - accused for the charge proved against them under Section 302 to read with 114 of IPC and sentencing each of the appellant accused to

undergo rigorous imprisonment for life and to pay fine of Rs. 1,000/- in default to undergo further rigorous imprisonment for six months is hereby quashed and set aside, instead, we convict each of the appellant accused under Section 325 to read with Section 114 of the Indian Penal Code for the injuries caused to deceased Shantaben Ramsingh and we sentence each of the appellant - accused for the imprisonment for the term each of the appellant accused has undergone and with fine of Rs.500/to be paid by each of appellant within one month from today in default to undergo further rigorous imprisonment of 15 days.

The sentences of imprisonment inflicted to appellant appellant - accused No.1 for the charges under Sections 323 and 325 of the Indian Penal Code is ordered to run concurrently.

Bail bond of each of the appellant - accused stands cancelled.

(B.J. Shethna, J.)

(J.R. Vora, J.)

p.n.nair